II. Commonwealth.

Introductory.

The Commonwealth Parliament passed 83 Acts in 1954, including one or two measures of a controversial nature. The first (and only) period of the third session of the Twentieth Parliament lasted from the 15th February, 1954, until the 14th April, 1954. The first period of the first session of the Twenty-first Parliament began on the 4th August, 1954, and ended on the 11th November, 1954.

I. FISCAL MEASURES.

International bank loan.

The Loan (International Bank for Reconstruction and Development) Act (No. 19 of 1954) authorises the borrowing of $54,000,000 from the International Bank; the loan agreement and regulations are annexed as schedules to the Act. The purpose of the loan is mainly to purchase capital equipment needed for the development of Australia's expanding industries, and the programmes to be financed—agriculture, road transport, air transport, etc.—and the proportions of the loan allocated are detailed in the agreement.

Northern Territory.

The development of the Northern Territory is a project to which all governments, to a greater or less degree, are prepared to devote themselves. The latest legislation is the Northern Territory (Lessees' Loans Guarantee) Act (No. 59 of 1954). Its object is to enable primary producers there to obtain extended credit with the minimum of difficulty, a facility considered desirable in view of projected changes in the system of land tenure. Under the terms of the Act, the Government agrees to guarantee the amount of advances made by banks over and above the amounts which they themselves would make available in the ordinary course of business. Normally bank advances are limited to about sixty per cent. of the value of the asset on which the credit is secured. The Act makes it clear that the maximum advance which may be made is £30,000.

II. PUBLIC SERVICE.

Superannuation.

The Superannuation Act (No. 11 of 1954) effected an amendment to the Superannuation Act 1922-1952 for the purpose of increasing the pensions payable to public servants on their retirement. This was done by increasing the value of pension units to which

employees contribute, increasing the maximum number of such units, and increasing the percentage of pension entitlement to salary. Pension amounts payable for dependent children were also increased.

Methods of appointment.

The Public Service Act (No. 63 of 1954) is designed to make the procedure and qualifications for appointment to the public service more definite, and to make one or two improvements to the Principal Act. Sec. 11 inserts a new sec. 34 which provides for notification in the Gazette of vacancies with details of qualifications required, salary and other conditions. It is also specified that the entrance qualification may be either a University examination or one conducted by a Public examining authority, or a competitive examination conducted by the Public Service Board. There are further provisions governing the nature and scope of the Board's examinations.

III. INDUSTRIAL LAW.

Stevedoring industry.

Industrial relations on the Australian waterfront have been troubled for many years. Successive governments have attempted remedies from time to time without achieving ultimate peace. In 1949 an Australian Stevedoring Industry Board was established (replacing the earlier Stevedoring Industry Commission) to represent all interested parties and to deal with disputes and conditions of employment at the docks. By the Stevedoring Industry Charge Act 1947 a charge was imposed on shipowners for the purpose of meeting the expense of operating the Commission (later the Board), of paying attendance money to waterside workers who offered themselves for employment but could not be used, and of providing waterfront amenities. The rate of the charge was then fixed at 4½d. per man-hour in respect of waterside workers employed, and the purpose of the Stevedoring Industry Charge Act (No. 12 of 1954) is to reduce the rate from 11d. to 6d. The rate in point of fact has varied considerably since the time of its introduction, according as the economic conditions of the industry have themselves fluctuated.

The introduction of the Bill into the House of Representatives touched off a lively debate. The Treasurer, Sir Arthur Fadden, stated[1] that since the reduction of the charge payable by the employers meant a saving for them, they would be expected to respond by reducing freight charges on the Australian coast, which are exceedingly high.

[1] See COMMONWEALTH PARLIAMENTARY DEBATES (NEW SERIES) (hereafter referred to as COMMONWEALTH PARL. DEB. (N.S.)), H. of R. No. 2 of 1954, at 42.

The Leader of the Opposition, Dr. Evatt, expressed considerable criticism of the result, and claimed that freight rates had not in fact been reduced as far as they might:—"The benefit that the shipowners will derive from the reduction of the levy is far greater than is the benefit that is to be passed on to those who use interstate shipping to carry their goods."[2] Government speakers claimed, on the other hand, that there were more costs to be met by shipowners than the charge imposed under the Act, and the debate on the measure continued in somewhat acrimonious terms in both the House of Representatives and the Senate. The sensitiveness in industrial and political circles on this subject is evident enough at all times, and is well illustrated by the report of the Stevedoring Industry Board from which Dr. Evatt quoted. It is there stated:—"It is characteristic of the stevedoring industry that the more active the Board is the more local opposition it encounters. Many shipowners have set themselves against the Board. . . . The old catch-cry that the Board is the 'appeaser of the Union' has also been resurrected . . . . Concurrently, the Union was labelling the Board as the 'lackey of the Bosses.' "[3]

The controversy began afresh later in the year when the Stevedoring Industry Act (No. 75 of 1954) made further changes in the law affecting waterside workers. In 1947 the present Opposition, then in office, introduced legislation to govern the method of engagement of labour on the waterfront. In 1949 the Stevedoring Industry Act which set up the Australian Stevedoring Industry Board in place of the Stevedoring Industry Commission gave that Board the power to determine quotas of waterside workers appropriate for each port (a power of course which the Commission had previously had under the 1947 legislation). The Waterside Workers Federation was permitted to retain its own power, which it had possessed since 1947, to select and provide the number required to fill up this quota. This was a very extensive concession indeed but had been granted on the understanding that the Federation would keep the quotas full. The Minister for Labour and National Service[4] (Mr. Holt) stated however that there had been considerable delay in many ports on the part of the Federation in admitting new members needed to maintain the quota levels. In view of the difficulties experienced on the wharves in consequence of labour shortages, the Act effected some alterations in the method of engagement. It was provided that where the quota at any port had not been filled, the Board might accept nominations of waterside

2 See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 3 of 1954 at 290.

3 *Ibid.*, at 288.

4 See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 17 of 1954, at 2672.

workers from employers. It will normally ask the employers to do this, and will then give the Federation the opportunity to object to any person nominated. Any such objections are to be investigated by the Board which may or may not proceed with the appointment. Workers engaged will become members of the Federation.

The new Act also authorised the establishment of a Committee of Inquiry to investigate waterfront conditions. This was felt to be necessary in view of the highly disturbed state of the industry, and followed indeed a number of earlier inquiries. The blame for the situation has been placed variously but always with strong emphasis on each party concerned, the employers, the dockers or the Australian Stevedoring Industry Board. "I have had to work my way", said Mr. Holt,[5] "through a mass of contradictory claims, denunciations, and conflicting allegations from various spokesmen of all the interests involved. It has been difficult enough for someone as close to those interests as I am to sift the facts under these circumstances, and it must be almost impossible for most people to obtain anything but a very distorted picture. Consequently, the Government considers that an impartial and objective fact-finding inquiry will be useful in this industry." Sec. 10 provides for three members to constitute the Committee, and Mr. Holt indicated that it was proposed to appoint a lawyer as chairman, a representative of management (but not connected with the waterfront) and a representative of labour (not being a member of the Waterside Workers Federation). It is given wide terms of reference with respect to the stevedoring industry by sec. 11.

Further provisions regarding the examination and attendance of witnesses, production of documents, taking evidence in private, offences against the Committee and protection and immunity of the Committee, counsel, witnesses and officers assisting are on similar lines to those to be found in the Royal Commission on Espionage Act 1954.

The introduction of this legislation led to an Australia-wide protest strike on the waterfront which, being prolonged, had considerable economic repercussions.

Compensation of employees.

The Commonwealth Employees' Compensation Act (No. 15 of 1954) increases the amounts of benefits payable to such employees (or their dependants) as compensation for injuries or illnesses suffered during their employment. This was done in view of the rise in the cost of living since the last amendment in 1951. Members of the Opposition

[5] *Ibid.*, at 2668.

took the opportunity during the debate on the measure to criticise the Government for the delay in providing for the increases.

At the same time the Seamen's Compensation Act (No. 16 of 1954) was passed to provide corresponding benefits for seamen employed in interstate shipping, except those already covered by awards. This continued a practice established for a number of years.[6]

IV. PRIMARY PRODUCTION.

Sugar production.

The sugar industry is an important one in the Australian economy and one therefore which has seen governmental regulation of one kind and another for many years. In 1951 a Sugar Agreement was entered into between the Commonwealth Government and the Government of Queensland, which is the largest sugar-producing State in Australia, and this agreement has been since amended twice. The Sugar Agreement Act (No. 65 of 1954) was passed in order to give the approval of Parliament to the amendments.

The agreement, in brief, aims at protecting and controlling the production of sugar. No importation of it may be made, and the selling price within Australia is fixed. The Queensland Government is obliged to acquire all sugar which is produced in Queensland and New South Wales, and to regulate sugar cane production in the former State. There is a Fruit Industry Sugar Concession Committee which presides over the interests of the processed fruits industry; the Queensland Government has contracted to provide funds to assist its operations.

Owing to changing economic conditions, it was agreed between the two Governments in February, 1952 that a Sugar Inquiry Committee should be set up to look into the question of an increase in prices and any other change in the agreement that might be thought necessary. The Commonwealth Government provided however in the meantime for an immediate price increase of 1½d. per lb. The inquiry into the industry which followed was a long and thorough one, and a final report was made in September, 1952. An additional increase in price, over and above that already tentatively approved, was recommended, though the opinions of the members of the committee differed as to the amount. The Government decided that in the circumstances an additional 1d. per lb. was justified, and with this decision the Queensland Government agreed. There were a number of other amendments to the agreement, concerning largely rebates payable on

[6] Cf. *Review of Legislation* 1953, 3 U. WESTERN AUST. ANN. L. REV. 150.

the sugar content of manufactured goods which are exported in cases where the home price of sugar exceeds the world parity price.

Flax industry.

Flax production was begun and controlled during the war by the Department of Commerce and Agriculture. By the Flax Industry Act 1953 a Flax Commission was set up as an independent body outside the Department to regulate its production as a preliminary to passing it over to private control.[7] In the course of 1954 it was found that economic conditions had placed the industry in some difficulties, since the overseas price of flax had fallen substantially to a level below the Australian price. The Tariff Board was therefore given the task of investigating the position, and this in due course recommended that a bounty should be paid in respect of all flax produced in Australia during the two years to come. This recommendation was accepted, and the Flax Fibre Bounty Act (No. 68 of 1954) gives effect to this decision. It had been decided that the Flax Commission, whose establishment had been postponed, should commence operations on the 1st November, 1954, and the Act provides that the bounty should likewise operate from that date. It is payable both to the Flax Commission and to the Blackwood Flax Co-operative Co. Ltd., of Western Australia, which are the only two producers. The bounty rate is £35 per ton of flax fibre, but this may fluctuate according to circumstances. In particular it may be reduced where the profit exceeds a tenth of the capital employed in the production.

Hide and leather industry.

The Australian Hides and Leather Industries Board was established early in the war and continued in control of the industries concerned until 1948, when price control powers were transferred from the Commonwealth to the States. The Board's functions—the compulsory acquisition of hides, and their appraisement and allocation —were continued thereafter by means of integrated Commonwealth and State legislation. When however the Government decided that it no longer wished to continue the marketing scheme, steps had to be taken to end the Board's existence. The winding up was expected to take a certain amount of time, and it was decided therefore during this period to suspend as a necessary interim measure the operative sections of the Hide and Leather Industries Act 1948-1953. This was done by the Hide and Leather Industries Act Suspension Act (No. 62 of 1954).

[7] *Supra,* at 156.

The Board's method of operation had been to acquire all hides at fixed prices, and allocate most of them to tanners at that price. A small number were kept for export and these commanded much higher prices. This profitable transaction, plus an export levy, provided the Board with funds which it used to pay for its own operations and to pay premiums to hide-producers. The difference however between export prices and domestic prices fluctuated considerably over the years, until it became so small that the Government decided to end the scheme. There had in any case been considerable pressure for a long time from most persons engaged in the industry to end the system of control, although the Opposition was critical of the Government's action.

Wine production.

The Wine Overseas Marketing Act (No. 39 of 1954) is designed to empower the Australian Wine Board to conduct marketing publicity in respect of Australian wine and brandy within this country. Under the Wine Overseas Marketing Act 1929-1953 the Board was established to control the export of wine, and the new Act was deemed necessary in order to validate its advertising activities within Australia. A move of this kind followed the realisation that production had increased while sales here and abroad had dropped, with the consequent possibility of damage to the industry. The Board is financed by a levy on winemakers and distillers based on the tonnage of fresh grapes and dried grapes used. The Wine Grapes Charges Act (No. 40 of 1954) is complementary legislation increasing the rates of the levy which had been unchanged since 1929.

Distillation of spirits.

The Distillation Act (No. 55 of 1954) is a small measure making one or two amendments to previous legislation. Distillers are not now obliged to store spirits at places more than 100 yards from the distillery. The earlier provision had been made in order to prevent evasion of revenue payments, but is now no longer considered necessary. Laboratory stills of not more than one gallon capacity need not be registered, and the Collector of Customs may allow spirits to be delivered in quantities of less than 10 gallons.

Meat export.

The Meat Export Charges Act (No. 33 of 1954) deals with the method of financing the operations of the Australian Meat Board. This Board had since 1946 been entrusted with the task of acting for the Commonwealth Government in connection with the bulk contracts

made with the United Kingdom, and since 1947 it had received funds by way of a percentage of the United Kingdom contract price. When the inter-governmental arrangements ended in September, 1954, a new method of providing funds became necessary, and a return is made in this Act to an earlier method, viz., the imposition of a levy on exports. The principal function of the Meat Board now is spreading publicity about Australian meat overseas.

Wheat marketing.

Under earlier legislation the marketing of wheat had been controlled by the Australian Wheat Board, and a stabilisation fund was established in order to maintain the selling price of wheat, this latter arrangement being due to end on the 30th September, 1953. In 1953, when the Australian Wheat Growers Federation sought an extension of stabilisation provisions for a further period, negotiations took place between the Federation, the Commonwealth Government and all State Governments. Owing to the objections of Victoria concerning the home selling price of wheat, agreement could not be reached, and eventually the Commonwealth passed the Wheat Marketing Act 1953 as an interim measure.[8] This however contained no provisions for price stabilisation, since it had been stipulated by the States that they should not be introduced unless approved by the growers in ballots conducted in each State. This was a reasonable arrangement, since it was the growers who would be required to contribute to the stabilisation fund. Owing to the difficulties encountered in the negotiations, it had proved impossible to hold the ballots and pass legislation based on the results before the 30th September, 1953. A sum of £9,000,000 was left in the old stabilisation fund, and the Government announced its intention in October, 1953, of returning this amount to the growers (it had been derived from charges levied against the growers on wheat exports) if they had not by the 31st March, 1954, expressed their approval by ballot of the amount's being retained for a new stabilisation plan. Since it had not, in the event, been possible to hold a ballot by that date, the Wheat Industry Stabilization (Refund of Charge) Act (No. 21 of 1954) was enacted to enable the amounts collected to be refunded to growers.

Later that year it proved possible for the Government to effect a stabilisation plan. In the first place, all States finally reached agreement with the Commonwealth on the matter of a marketing scheme, Victoria having withdrawn its objections concerning the home selling price of wheat, and in the ballot conducted in September, 1954, the

[8] *Supra,* at 156.

wheatgrowers voted by an overwhelming majority in favour of wheat stabilisation. In these circumstances both Commonwealth and States were able to go ahead and introduce appropriate legislation in concert. The Wheat Industry Stabilisation Act (No. 70 of 1954) now sets out the new arrangement which has been approved by all concerned. It repeals the Wheat Marketing Act 1953 and re-introduces a marketing scheme with the new addition of stabilisation provisions.

The new Act is to operate for five years, beginning with the 1953-54 harvest. The essential features of the plan are that the Government guarantees to growers the cost of production, and establishes a stabilisation fund as a basis for this guarantee. In order to set up the fund a tax of up to 1/6d. a bushel (varying according to the extent to which export prices exceed the cost of production) is imposed on all wheat exported. When export prices drop below production cost the fund is to be used to raise the returns of growers to the cost of production and if the fund should prove inadequate, the Treasury will provide the difference. At the request of wheatgrowers, it was provided that the fund should not exceed a maximum figure of £20,000,000. It was necessary to establish a new fund since the old one had been liquidated (see above) by the Wheat Industry Stabilization (Refund of Charge) Act, 1954.

The Australian Wheat Board continues of course to function as the sole body authorised to control the export of wheat and to arrange for its marketing within Australia. Its constitution and powers are dealt with chiefly in secs. 6, 7 and 13 of the Act. Sec. 13 (2) enables the Minister for Commerce and Agriculture to give directions to the Wheat Board concerning the performance of its functions.

Sec. 23 also makes provision for the home consumption price of wheat. It is not to be less than the cost of production, and subject to this it is to be the International Wheat Agreement Price or 14/-, whichever is the less.

The Wheat Export Charge Act (No. 71 of 1954) was a necessary complementary measure, providing specifically for the tax to be imposed on exported wheat in the interests of the stabilisation fund.

Export of dairy produce.

Early in the last war it was arranged that the whole of Australia's exportable surplus of butter and cheese should be sold to the United Kingdom, this being done by contract entered into by the British Government and the Australian Government. The British Ministry of Food assumed the whole responsibility of distribution and price control of these commodities in the United Kingdom. This

arrangement lasted until the 30th June, 1955, but the ending of the rationing of butter and cheese in Britain in May, 1954, and the consequent resumption of ordinary commercial trading in place of governmental organisation meant that new arrangements for the marketing of dairy produce had to be made. The Australian Dairy Produce Board had acted as agent of the Commonwealth Government in purchasing butter and cheese from producers, and had then arranged shipment of the produce to the British Ministry of Food.

Under the Dairy Produce Export Control Act (No. 17 of 1954) the Board was reconstituted to meet the new conditions of trading and in particular the competition which was expected from other countries. It was set up as the sole marketing authority for exports to the United Kingdom, with power to lay down selling policy, pool the proceeds of sales for the purpose of distribution to producers, and appoint agents in the United Kingdom. It was also empowered itself to purchase butter and cheese intended for export, but only in cases where the producer asked to be financed by the Board.

The scheme outlined above was approved by the producers as represented by the Dairy Farmers Federation and also by exporters. The Government felt that a central marketing organisation was essential, and the Act had also the support and approval of the Opposition.

Export of eggs.

The ending of egg rationing and price control in the United Kingdom in March, 1953, and the unrestricted import of eggs from sterling sources from January, 1954, raised problems for Australian producers as in the case of dairy produce, and the Egg Export Control Act (No. 18 of 1954) was enacted to deal with the situation. The Australian Egg Board had been established in January, 1948, to act as agent for the Australian Government in the inter-governmental agreement with the United Kingdom. Eggs were purchased by the Commonwealth Government from the various State egg boards and the Australian Egg Board arranged for their sale to the United Kingdom. Agreement was finally reached among the States for the re-constitution of the Australian Egg Board as the agent of the State boards in the selling of eggs abroad, and for it to be the sole exporting authority for all States if they agreed. If any State does not wish to join in the pooling scheme, the Australian Egg Board may act only for those which do consent, and the non-participating State will have no vote on matters concerning the pooling. The Board has power to control the conditions of export marketing, such as selling prices, appointment of agents, carriage, and so on.

It is provided by sec. 4 that the Australian Egg Board is to consist of representatives from each of the State egg boards (except Tasmania), a Government representative, a member with commercial experience, and an employees' representative.

V. DEPENDENT TERRITORIES.

Papua and New Guinea.

The Papua and New Guinea Act (No. 41 of 1954) contains a mixed bag of amendments to the Principal Act, the Papua and New Guinea Act 1949-1950. An important one concerns the grant of a pardon or a remission or commutation of sentence in the case of a death sentence. Formerly the Administrator had been empowered to take action in this respect, and the new Act confers the power, as a matter of policy, on the Governor-General. Sec. 11 enables the Governor-General to assent, if he wishes, to part only of an ordinance of the Legislative Council. Previously he had been able to assent to or withhold assent from an ordinance only in its entirety. Further sections change the title of the Chief Judge of the Supreme Court of the Territory to Chief Justice, and of Native Village Councils to Native Local Government Councils, since most councils now cover several groups of villages.

Australian Antarctic Territory.

The Australian Antarctic territory comprises a large area and is one which at present is attracting a lot of attention. It had however been difficult in the past to know exactly what body of law there operated, and the Australian Antarctic Territory Act (No. 42 of 1954) has put the matter at rest. It provides by sec. 6 that the laws of the Australian Capital Territory are to operate there so far as they are applicable. No Acts however are to apply unless they are expressly stated to extend to the Antarctic Territory. These provisions are similar to those enacted in the Heard Island and McDonald Islands Act 1953.[9] Sec. 11 also provides that the Governor-General may make Ordinances for the Territory; these are to be laid before each House of Parliament, and may there be disallowed.

Cocos Islands.

The Cocos (Keeling) Islands (Request and Consent) Act (No. 76 of 1954) is the first legislative step in the acquisition of sovereignty over the islands by Australia. Discussions had proceeded for some time with the United Kingdom Government on the matter, since Australia

[9] *Supra,* at 160.

wished to develop the airstrip there (which is used for the Sydney-Perth-Johannesburg service), and it was eventually agreed by the United Kingdom, after consultation with the Colonial Government of Singapore which administered the islands, that they should be transferred to Australia. The present Act embodies a request by Her Majesty's Government in Australia to Her Majesty's Government in the United Kingdom to legislate for transfer of the islands.

The United Kingdom has since formally acceded to this request by enacting the Cocos Islands Act, 1955,[10] and a further statute of the Australian Parliament[11] has accepted the transfer and made provision for the islands' administration.

VI. INTERNATIONAL ENGAGEMENTS.

South-East Asia Collective Defence Treaty.

This treaty was entered into on the 8th September, 1954 by Australia, France, New Zealand, Pakistan, the Philippines, Siam, the United States, and the United Kingdom, and its avowed purpose is the defence of South-East Asia and adjoining areas against aggression. During the discussions preceding the treaty it was clear that communism was regarded by the signatories as the chief danger and it was indeed the occasion of their meeting. This point is made clear beyond doubt in the preamble to the South-East Asia Collective Defence Treaty Act (No. 77 of 1954) which formally ratifies the treaty, and sets it out in the Schedule.

Article I of the treaty contains an undertaking to settle disputes by peaceful means in accordance with the United Nations Charter. By Article II the signatories agree to develop their capacities to resist armed attack and to provide mutual aid, and by Article III they agree to co-operate in economic measures aimed at social progress and well being. Article IV is the core of the Treaty; the parties agree to act in accordance with their constitutional processes in the event of aggression by armed attack in the treaty area against any signatory or against any territory which they may thereafter unanimously designate. The action to be taken need not, it appears, necessarily be military. The United States signed the treaty on the understanding that the aggression referred to would be limited to communist aggression. The same Article also provides that the parties will consult on all matters, not being armed attack, which may affect the peace or integrity of the area.

10 3 and 4 Eliz. 2, c. 5.

11 The Cocos (Keeling) Islands Act (No. 34 of 1955).

Article VIII defines the treaty area. It includes South-east Asia and all the territories of the Asian parties and the South-west Pacific (which includes Australia and New Zealand). Hong Kong and Formosa are deliberately excluded. Article VI contains a saving in favour of the rights and obligations of the parties under the United Nations Charter. A Council, on which each of the parties has a seat, is set up by Article V for the purpose of consultation and furthering the aims of the treaty. Article X provides that it is to remain in force indefinitely, subject to one year's notice of withdrawal by any signatory.

VII. ROYAL COMMISSION.

Royal Commission on espionage.

On the 13th April, 1954 the Prime Minister, Mr. Menzies, announced[12] in the House of Representatives that a Third Secretary of the Soviet Embassy in Canberra, Vladimir Mikhailovich Petrov, had a few days before sought political asylum in Australia and been granted his request. It appeared that Petrov was also a member of the M.V.D., and had offered to make available to the Australian authorities a quantity of documents. In these circumstances, and particularly since it was possible that a number of Australian citizens might be implicated, the Government decided to appoint a royal commission to investigate espionage activities in Australia. In consequence the Royal Commission Act (No. 2 of 1954) was passed with the unanimous support of all political parties. Fresh legislation dealing with this particular matter was considered desirable for the purpose of making it clear that this was a subject falling within the constitutional competence of the Commonwealth, in respect of which therefore witnesses might be compelled to attend and give evidence. This in point of fact had been the practice in the case of each new Royal Commission set up since the decision of the Judicial Committee of the Privy Council in *Attorney-General for the Commonwealth of Australia v. The Colonial Sugar Refining Company, Limited.*[13] The Royal Commissions Act 1902-1912 had purported in general terms to give Royal Commissions the power to compel the giving of evidence and the production of documents. Since the powers of the Commonwealth Parliament are restricted under the Constitution to certain specified subjects in accordance with the federal system of government, the Judicial Committee held that the Royal Commissions Act was *ultra vires* the Constitution insofar as it attempted to confer a power to

12 See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 3 of 1954, at 325.
13 [1914] A.C. 237; (1913-1914) 17 Commonwealth L.R. 644.

compel the giving of testimony generally in response to questions put, or to demand the production of documents. As the Leader of the Opposition, Dr. Evatt, put it in discussing the present legislation,[14] the effect of the decision was that "an act of Parliament to appoint a royal commission must indicate the precise matters of Commonwealth jurisdiction that are being examined by the royal commission." The Royal Commission Act 1954, while not in the nature of things being very precise in its directions, did specifically authorise investigation into alleged acts of espionage and the commission of other acts prejudicial to the security of the country.

Considerable political controversy was aroused throughout the country by the Petrov affair, and this is reflected in the debates and questions asked in both Houses. As a result however of important legal doubts about the efficacy of the Act, further legislation, in the form of the Royal Commission on Espionage Act (No. 28 of 1954), was passed after Parliament had been re-convened on the 4th August. A communist journalist, Rupert Lockwood, being called to give evidence, had refused to testify on the grounds that the establishment of the Royal Commission was invalid. His stand was based on the argument that the Royal Commission Act 1954 provided for a single Commissioner, whereas three were appointed, and Lockwood sought an injunction in the High Court of Australia to restrain the Commission from proceeding. He also brought an action for defamation against counsel assisting the Commission, there being some doubt as to whether any persons other than witnesses and Royal Commissioners were protected under the Royal Commissions Act 1902-1933. Lockwood did not succeed in obtaining an injunction. Mr. Justice Fullagar indeed held that the Royal Commission Act 1954 did not authorise the appointment of more than one Commissioner, but held further that the Royal Commissions Act 1902-1933 did. The action for defamation was not proceeded with, and was no longer possible after the passage of the Royal Commission on Espionage Act.

This Act was drawn up so as to cover fully all the provisions intended to be applied to the Petrov Royal Commission. In particular it declared by sec. 5 that the Commission had at all times been authorised to proceed as directed by the Letters Patent issued under the authority of the Royal Commission Act 1954. In addition by secs. 25 and 26 the Commissioners, counsel, Government servants concerned with recording the proceedings, and newspapers and broadcasting stations giving a fair and accurate report are given protection against any civil or criminal action, which protection is in all cases

[14] See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 3 of 1954, at 381.

retrospective to the beginning of the Commission's operation. The power of the Commission to compel witnesses to attend and give evidence and to produce documents on request is made clear beyond doubt, and penalties are provided for failure to comply with an order of the Commission. Offences of this kind, being also contempt of the Commission, are punishable by the High Court as if they were contempt of that Court.

An important provision is to be found in sec. 14 (1). No person may refuse to testify or to produce any document on the grounds that by complying with the Commission's order that person or that person's wife or husband would be incriminated. This is a provision of a kind not unknown in times of national crisis, but protection is afforded by sec. 14 (2) which provides that evidence given by anyone before the Commission is not admissible against that person (or that person's spouse) in any legal proceedings against the witness (or spouse), except in the case of proceedings for some contravention of the Act or for perjury. Sec. 16 provides that evidence may be taken in private.

The Royal Commission has now completed its hearings, and its report was handed to the Governor-General in August.

VIII. GENERAL.

National flag.

The Flags Act (No. 1 of 1954) passed all stages in both Houses in 1953 but on the 12th December of that year it was reserved for Her Majesty's pleasure. This gesture was made in recognition of the impending visit of the Queen and the Duke of Edinburgh to Australia, and on the 14th February, 1954 the Queen's assent was given in person on Australian soil. The Act formally adopts the Australian Blue Ensign as the national flag, which incorporates the Union flag (commonly known as the Union Jack), a seven-pointed star representing the six States of the Commonwealth and Commonwealth territories, and the stars of the Southern Cross. The flag used by the Australian merchant marine is by sec. 4 (1) designated as the Australian Red Ensign, which except for the difference in colour indicated by the name, is the same in form and details as the Blue Ensign. Descriptions and coloured reproductions of the flags are given in the Schedules to the Act.

In speaking to the Bill in the House of Representatives,[15] the Prime Minister pointed out that the intention was to give formal

[15] See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 11 of 1953, at 367.

statutory approval to a situation already largely established in practice. The Australian flag was selected after Federation as the result of a competition, and approved by King Edward VII in 1902, but no further steps were taken in official confirmation. The present Act is a belated measure of that kind. The occasion called forth a certain amount of oratory which at times was little short of emotionalism, and one member quoted an execrable piece of verse to relieve his feelings.

Sec. 6 of the Act empowers the Governor-General to authorise the defacement of either of the flags provided for. The use of the heraldic term defacement appears to have been misunderstood by the Deputy Leader of the Opposition, Mr. Calwell, who, in citing United States practice in this respect, seemed to regard it as amounting to some kind of dishonour to the flag.[16] Sec. 7 permits the Governor-General to make rules as to the use of the flags, and sec. 8 provides that the Act is not to affect the right of any person "to fly the Union Jack."

It was necessary later in the year to enact the Flags Act (No. 58 of 1954) in order to make a slight alteration to the dimension of the outer diameter of the seven-pointed star. In the debate on this Act, Mr. Calwell again urged[17] the encouragement of what he called "symbolic reverence" for the flag.

Patent law.

The Patents Act (No. 14 of 1954) was made necessary because of defects revealed as a result of court action concerning the Patents Act 1903-1950 and the Patents Act 1952. The former Act provided for the correction by the Commissioner of Patents of any clerical errors, while sec. 108 empowered the Governor-General to make regulations prescribing any matters necessary for giving effect to the Act. Regulation 147 made under the authority of the Act empowered the Commissioner to amend "any document, for the amending of which no special provision is made by the Act." In the case, however, of *The Queen v. Commissioner of Patents; Ex parte Martin*,[18] the High Court of Australia held that regulation 147 was invalid as being beyond the power to make regulations conferred by the Act. Later, the Privy Council refused leave to appeal and made further observations on the Patents Act 1952. In this Act the possible invalidity of regulation 147, for the reasons ultimately given above, had been recognised, and power had therefore been given in it to make a regulation

16 See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 13 of 1953, at 817.

17 See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 15 of 1954, at 2337.

18 (1953) 89 Commonwealth L.R. 381.

in the terms of regulation 147, which in fact was promulgated. The Privy Council however held that a regulation could still not give a larger power to amend than one already envisaged in the Act itself.

The Patents Act 1954 therefore rectifies the position by validating retrospectively all amendments previously made under regulation 147, and by extending the power to make regulations under the Acts to include regulations making provision for amendment of any patent or other document. The power is also given to make regulations providing for appeals from decisions of the Commissioner in the case of applications for amendment.

Bankruptcy.

Written constitutions seem to suffer inevitably from visitations by gremlins. Under the Bankruptcy Act 1924-1950 there were provisions authorising registrars in bankruptcy to make sequestration orders in the case of petitions presented against themselves by debtors. In 1953, however, in the case of *The Queen v. Davison,*[19] the High Court held that the power thus conferred was a judicial function, and in the result contravened secs. 71 and 72 of the Constitution which required that judicial powers be conferred on federal courts held only by judges appointed for life. This meant that all sequestration orders made by registrars during the preceding quarter of a century were invalid, and in order to avoid the difficulties and confusion which could have resulted from this, an immediate remedy was needed. The Bankruptcy Act (No. 83 of 1954) attends to the matter firstly by a retrospective validation. Sec. 13 provides that in any case where a debtor had presented a bankruptcy petition against himself, he became a bankrupt by virtue of the presentation of the petition (and not, therefore, as a result of the making of a sequestration order by the registrar). Since the decision in *The Queen v. Davison,* debtors' petitions had been heard in the appropriate court exercising bankruptcy jurisdiction. It was decided to allow this practice to continue, and to remove from the Principal Act the powers of the registrar which the case had adjudged to be invalid.

Broadcasting and television.

The Australian Broadcasting Control Board is now required to hear in public applications for licences for commercial television stations. The Television Act 1953[20] contemplated the establishment of both commercial and national stations, and provided that the recommendations of the Board should be borne in mind before commercial

19 (1953-1954) 90 Commonwealth L.R. 353.
20 See *Review of Legislation* 1953, 3 U. WESTERN AUST. ANN. L. REV. 159.

licences were granted. In view of the additional functions which the Board would have to perform under the new dispensation, the Royal Commission on Television recommended in 1953 that the membership of the Board should be increased. The Broadcasting Act (No. 82 of 1954) therefore adds two additional part-time members, making a total of five, in anticipation of the detailed provisions of later legislation.

Gold production.

The Gold-Mining Industry Assistance Act (No. 79 of 1954) provides for the payment to the producer of bullion of a subsidy on his production, provided his cost of production is not less than £13/10/- a ton. The maximum amount of subsidy to be provided is £2 an ounce. This subsidy has been made payable as a means of supporting the industry, which is very important in Australia's economy and has been facing considerable financial difficulties. The subsidy will be reduced where the profits exceed one-tenth of the capital used in production.

Sulphuric acid production.

The Sulphuric Acid Bounty Act (No. 78 of 1954) provides that a bounty be paid on sulphuric acid produced in Australia from pyrites. This was considered to be necessary since imported brimstone had fallen considerably in price, and sulphuric acid manufactured from it was cheaper as a result than locally produced acid. However, the irregularity of brimstone supplies and periodical shortages to be expected for some time to come meant that Australian production should be encouraged to continue, and the Act has been passed with that end in view. The bounty is to be reduced where profits exceed one-eighth of the capital used in production.

Roads and road maintenance.

The large area and small population of Australia mean that the making and maintenance of roads are an exceedingly expensive matter. Good roads however remain an urgent necessity, not only for the development of the country's resources but also in the interests of defence. This of course has long been recognised, and since 1923 the Commonwealth Government has provided financial assistance to the States for this purpose, although roads are under constitutional arrangements not the Commonwealth's concern. The States themselves would not have been able alone to deal with the matter as was necessary and the intention behind Commonwealth intervention is to supplement the measures of the States, not to relieve them of any

liability. The Commonwealth Aid Roads Act (No. 57 of 1954) is a new statute replacing previous legislation and providing for Commonwealth contributions to roads and their maintenance for a period of five years from the 1st July, 1954. It is not proposed that Commonwealth assistance should cease at the end of that period, but that circumstances should then be reviewed.

The new Act changes the method of taxing petrol consumed. Previously there had been a customs duty of 6d. a gallon allocated for road purposes levied on imported petrol, and an excise duty of 3½d. a gallon for the same purpose on petrol locally refined. The great increase in the quantity of locally refined petrol[21] meant that the return on duty charges would be seriously affected. It is therefore now provided that the allocation for road purposes is to be 7d. a gallon on all petrol and similar products entered for home consumption, except aviation spirit.[22] This means that all petrol, imported or locally refined, is subjected to the same duty allocation.

There are a number of other important provisions concerned with the expenditure and distribution of the funds raised. Sec. 9 (2) directs that amounts paid to a State are to be spent on the construction, maintenance and repair of roads or on the purchase of road-making equipment, or on making payments to local authorities for such construction, repair, etc. Forty per cent. (previously thirty-five per cent.) of the amounts allocated must be spent on rural roads not being main roads or trunk roads. The States are also authorised to devote a total of £1,000,000 per annum on works connected with transport by road or water. By sec. 12 the sum of £800,000 per annum is made available to the Commonwealth for the construction or maintenance of strategic roads and of other roads serving Commonwealth purposes. The importance of road safety is recognised to the extent of providing £100,000 per annum for the promotion of road safety practices throughout Australia.

Sec. 10 establishes the method of distribution of the available funds among the States, which indeed is unchanged from the earlier legislation. Tasmania receives five per cent., and of the remainder three-fifths is divided among the other States on the basis of population, and two-fifths on the basis of area. The Prime Minister, Mr. Menzies, in introducing the legislation in the House, said, "The real purpose of the formula is that these moneys should be distributed throughout Australia so that those parts which are the least able out

21 There are new large refineries at Kwinana in Western Australia, Altona and Geelong in Victoria, and Kurnell in New South Wales.

22 See the Schedule to the Act.

of their own resources to provide and repair roads should be placed in a position to get on with the job."[23] In order that the use to which the funds provided are put may be supervised, sec. 11 requires each State to submit annually an account of its stewardship, and the Auditor-General to certify that the amounts shown have been expended, and expended in accordance with the Act.

Mr. Menzies pointed out in the course of his address that the Government did not subscribe to the view that the amount of road assistance should be equal to the amount of petrol tax collected. This doctrine had in fact never been acted upon, and it was also possible that the assistance provided might on some occasions need to be greater than the petrol tax receipts.

L. J. DOWNER.

[23] See COMMONWEALTH PARL. DEB. (N.S.), H. of R. No. 14 of 1954, at 1999.